



DR. Ranbir Singh

ARTICLE 44 IMPLEMENTATION IS THE NEED OF INDIA

Assistant Professor- Faculty of Law, Agra College, Agra (Dr. B.R. Ambedkar University, Agra) (U.P.) India

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E-mail:singh.ranbir3178@gmail.com

Abstract: Article 44 of the Indian Constitution, the State is directed to make an effort to establish a Uniform Civil Code (UCC), applicable to all citizens across the entire territory of India. A Uniform Civil Code will provide a single uniform code of civil laws on issues related to marriage, divorce, inheritance, adoption, maintenance and succession; regardless of the religion of individuals. Although, Article 44 was incorporated into the constitution in 1950, it has remained largely untouched by the Government of India at the National Level. The debate over whether or not to introduce a Uniform Civil Code has become increasingly relevant in modern day India due to the growing public concern about gender justice, equality before law, secularism and national integration. Advocates of a UCC claim that it will help to eliminate discriminatory aspects of current personal laws that are predominantly disadvantageous to women and will aid in promoting Constitutional Values. Detractors of a UCC claim that it could compromise the right of individuals to exercise their religious freedoms and also undermine the rights of minorities as enshrined within the Constitution. In this context, this paper evaluates the constitutional structure established through Article 44; how it interacts with other provisions contained within the Directive Principles of State Policy; the relationship between a UCC and Fundamental Rights; judicial precedent and decisions and finally considers the implications for minority rights and Constitutional Morality. Ultimately, this paper argues that if a UCC is carefully crafted and includes the views and perspectives of all segments of society, it can contribute to social justice and good Constitutional Governance without undermining India's pluralist nature.

Key words: Article 44, Uniform Civil Code, Directive Principles, Fundamental Rights, Gender Justice.

Introduction- The cultural and religious diversity in India has created an environment where many different types of customs/traditions/personal laws have developed and coexist. Each community of people practicing a different religion are covered under their own "personal law" regarding issues including but limited to marriage/divorce/adoption/guardianship/ maintenance/ succession. Criminal laws on the other hand are generally consistent across all parts of the nation; however, the regulation of civil matters continues to be based upon the type of religion practiced.

India is a multicultural and multi-religious society characterized by diverse customs, traditions, and personal laws. "Different religious communities are governed by separate personal laws in matters relating to marriage, divorce, adoption, guardianship, maintenance, and succession. While criminal laws are largely uniform across the country, civil matters continue to be regulated by religion-specific legal systems. The framers of the Constitution recognized the need for a common civil law and incorporated Article 44 under the Directive Principles of State Policy".¹

The objective behind Article 44 was not merely legal uniformity but also the promotion of social reform, national integration, and equality among citizens. However, due to political sensitivities and concerns regarding religious autonomy, "the implementation of a Uniform Civil Code has remained one of the most debated constitutional issues in India. The question is whether the time has come for India to realize the constitutional aspiration embodied in Article 44."

Constitutional Framework of Uniform Civil Code- The constitutional basis of the Uniform Civil Code lies primarily in Article 44 of the Constitution, which states that "the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India."² Although not enforceable by courts, Directive Principles serve as fundamental guidelines for governance and legislative policy."

The Constituent Assembly extensively debated the issue of personal laws and legal uniformity. Dr. B.R. Ambedkar emphasized that a Uniform Civil Code would not necessarily abolish religious practices but would regulate secular aspects of social life.³ The framers viewed personal law reform as an important step toward social modernization and equality.

The "Uniform Civil Code (UCC) can be traced back to Article 44 of the Indian Constitution. This article specifically addresses this issue and it states that the State shall strive to bring about conditions which will ensure justice, social, economic and political to all citizens and thereby secure a Uniform Civil Code throughout the territory of India. Although these principles are non-enforceable by Courts they do provide general guidance to government agencies and legislative bodies regarding how to govern."



Article 44 and Directive Principles- Part IV is made up of Articles 36 – 51 which contain” the Directive Principles of State Policy (DPSPs) of the Constitution. Even though the DPSPs are non-enforceable under law, Article 37 states that they represent the basic governing principles of this nation and impose an obligation on the State to give effect to these provisions in its legislative enactments”.⁴

As such, the creators of the Constitution had envisioned that the Directive Principles would provide tools to achieve a socially democratic society. In Article 44, we find an example of the vision of India as a secular state in which both rights and duties are protected equally regardless of religion. “The Supreme Court of India has continuously expressed that there should be harmony when interpreting the directives of policy and the fundamental rights provided by the constitution.”⁵

While various changes were made in respect of reforming aspects of Hindu law, “e.g., Hindu Marriage Act, 1955; Hindu Succession Act, 1956; etc. demonstrate the desire of the State to modify certain aspects of private/personal laws”, these types of reforms have not yet been made in a manner that is uniform among all religions and therefore continue to lead to debate about equality and uniformity.

Interface with Fundamental Rights- In many cases, the Uniform Civil Code debate is about how Article 44 relates to fundamental rights in general (Articles 25 and 26), specifically to the extent they protect people's right to free exercise of religion. Opponents of the uniform code cite concerns that its implementation would infringe upon people's religious freedoms and their ability to govern their own communities.⁶

However, the Supreme Court has repeatedly made a distinction between those aspects of religions that are most important, and other issues that are social, or “secular” (in terms of religion) such as personal law and can be regulated by statute. Thus, there is no violation of religious freedom should the UCC regulate only the civil rights and responsibilities of citizens. Furthermore, articles 14 and 15 of the Indian Constitution both provide protections from discrimination based on religion, sex, caste, or place of birth; some of these discriminations exist within the provisions of existing family law statutes. For example, many of the provisions of personal law are discriminatory toward women. A Uniform Civil Code could be one tool to achieve substantive equality and gender equity, and do so in a manner that does not contradict any provision of the constitution. Finally, article 21 provides protections to individuals' dignity that support reforms designed to eliminate disparate treatment and allow equal civil rights to all citizens regardless of their faith.

Judicial Interpretation of Uniform Civil Code- The judiciary has taken a “major part in developing the discourse of the Uniform Civil Code. It was the Supreme Court in Mohd. Ahmed Khan v. Shah Bano Begum⁷ that underlined how desirable a Uniform Civil Code is, and stated that Article 44 had been a dead letter since its enactment.”

Justice Kuldeep Singh articulated similar views when he wrote in Sarla Mudgal v. Union of India⁸ that a UCC will help remove contradictions which arise from religion based personal laws.

Similarly in Lily Thomas v. Union of India⁹ the Court restated what was said by Justice Singh in Sarla Mudgal, and emphasized the need to stop people using religious conversion as a means to avoid legal obligations.

Shayara Bano v. Union of India¹⁰ “struck down instant triple talaq, reinforcing the judiciary’s commitment to the constitutional values of equality and dignity. As such, although Shayara Bano did not result in a Uniform Civil Code being implemented, it illustrated that no matter how entrenched personal laws are; they do not have immunity from constitutional review.”

Therefore, judicial statements show an ongoing acknowledgement of the requirement for progressive reform of personal laws and an acceptance of religious diversity.

Uniform Civil Code, Minority Rights, and Constitutional Morality: A Critical Analysis- The biggest challenge facing “the implementation of a Uniform Civil Code relates to minority rights. Under Articles 29 and 30 of the Indian Constitution, cultural and educational rights of minorities are protected.” Some critics believe that if a uniform code were to be enacted; there could be widespread perception that it imposes the customs of the majority community on minority communities (thereby destroying cultural pluralism).¹¹

Those who support a uniform civil code assert that the aim is to achieve legal equality, and not cultural assimilation. If appropriately formulated, a UCC would preserve the right to follow religious practices, rituals, and beliefs. Rather, it would institute common civil principles relating to marriage, divorce, maintenance, adoption, and inheritance. This approach would provide for equal rights to all parties involved while allowing for preservation of cultural differences.



Constitutional morality is a helpful construct for reconciling this contradiction. From a moral perspective; constitutional morality obligates all laws and public bodies to adhere to the values of liberty, equality, dignity, secularism, and justice embedded within the constitution. When those values are violated by personal laws, constitutional morality allows for legislative action.

In particular, where personal laws violate these values; the pursuit of constitutional morality can be seen as an attempt to bring about harmony between personal law systems and constitutional values instead of an infringement upon religious freedoms.

The problem is in formulating a code that satisfies both equality and diversity and does not create impressions of majoritarian domination.

Therefore, a consultative and inclusive legislative process among all communities, scholars/jurists, and civil society organizations is required. This type of process can convert the political issue surrounding the UCC into a meaningful instrument for social reform and constitutional governance.

CONCLUSION- Article 44 contains a constitutionally mandated aspiration that remains unfulfilled nearly eight decades after the adoption of the Constitution. A Uniform Civil Code is not just a legal reform; it represents an even larger commitment to equality, secularism, and social justice. Therefore; although concerns regarding minority rights and religious freedoms must be carefully considered; they should not impede the realization of constitutionally-mandated values.

Decisions made by courts, constitutional principles and present-day societal realities suggest that there exists an urgent need for incremental and inclusive implementation of a Uniform Civil Code. A UCC must honor India's diversity while providing every citizen with identical civil rights regardless of their faith. Therefore, implementing Article 44 is not simply a legally enforceable constitutional goal but also a first-step towards achieving substantive equality, gender justice and national integration in today's India.

Footnote

1. Constituent Assembly Debates, Vol. VII (23 November 1948).
2. Constitution of India, Art. 44.
3. Constituent Assembly Debates, Vol. VII.
4. Constitution of India, Art. 37.
5. *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.
6. Constitution of India, Arts. 25–26.
7. *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556.
8. *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635.
9. *Lily Thomas v. Union of India*, (2000) 6 SCC 224.
10. *Shayara Bano v. Union of India*, (2017) 9 SCC 1.
11. Constitution of India, Arts. 29–30.

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5. Law Commission of India, Consultation Paper on Family Law Reforms (2018).
6. *Mohd. Ahmed Khan v. Shah Bano Begum* (1985) 2 SCC 556.
7. *Sarla Mudgal v. Union of India* (1995) 3 SCC 635.
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